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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/661,466	09/11/2003	Franco Vitaliano	VXM-001B	7136

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EXAMINER

NEGIN, RUSSELL SCOTT

ART UNIT PAPER NUMBER

1631

DATE MAILED: 03/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



## **DETAILED ACTION**

### ***Election/Restrictions***

The applicant is required to elect one specie from each of the three categories.

This application contains claims directed to the following patentably distinct species:

#### **Category #1: Agent type**

Specie A: the subset of the non-quantum information processing cargo elements includes one or more therapeutic agents (Claim 29)

Specie B: the subset of the non-quantum information processing cargo elements includes one or more diagnostic agents (Claim 30)

Specie C: the subset of the non-quantum information processing cargo elements includes one or more sensor agents (Claim 31)

Specie D: the subset of the non-quantum information processing cargo elements includes one or more prosthetic agents (Claim 32)

Generic: Claims 1-28, 33-67

Justification: Each agent has a mutually exclusive and distinct use. Therapeutic agents, diagnostic agents, sensor agents, and prosthetic agents are each separate forms of agents. In addition, the searches for the above mentioned agents are different and require undue burden.

#### **Category #2: frequency**

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Specie E: the electromagnetic region has a frequency in the UHF region (claim 38)

Specie F: the electromagnetic region has a frequency in the microwave region (claim 39)

Specie G: the electromagnetic region has a frequency in the radio region (claim 40)

Generic: Claims 1-27, 41-67

Justification: Each electromagnetic region is mutually exclusive and distinct. The UHF, radio, and microwave regions are separate regions in the electromagnetic spectrum. In addition, the searches for each region of the spectrum are divergent and are not coextensive.

### Category #3: Qubits

Specie H: A quantum information processing platform according to claim 1, wherein the at least one qubit of a subset of the quantum information processing elements includes an unpaired electron and the plurality of logical states of the qubit are defined by electron spin polarization. (claim 41)

Specie I: A quantum information processing platform according to claim 1, wherein the at least one qubit of a subset of the quantum information processing elements includes a nucleus and the plurality of logical states of the qubit are defined by nuclear spin polarization. (claim 42)

Specie J: A quantum information processing platform according to claim 1, wherein the at least one qubit of a subset of the quantum information processing elements includes an unpaired electron, and the plurality of logical states of the qubit are defined relative

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to an energy difference (claim 43)

Specie K: A quantum information processing platform according to claim 1, wherein the at least one qubit of a subset of the quantum information processing elements includes a nitroxide molecule. (claim 44)

Specie L: A quantum information processing platform according to claim 1, wherein the at least one qubit of a subset of the quantum information processing elements includes a free radical molecule. (claim 45)

Generic to #3: Claim 1-29, 46-67

Justification: The contents of the qubit for each of the above quantum information processing platforms are separate and distinct. An unpaired electron, a nucleus, a nitroxide molecule, and a free radical are mutually exclusive. Energy spin polarizations and energy differences are also mutually exclusive. In addition, the searches for the above mentioned subatomic particles and energy definitions are different and require undue burden.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim

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is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions

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unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Papers related to this application may be submitted to Technical Center 1600 by facsimile transmission. Papers should be faxed to Technical Center 1600 via the central PTO Fax Center. The faxing of such pages must conform with the notices published in the Official Gazette, 1096 OG 30 (November 15, 1988), 1156 OG 61 (November 16, 1993), and 1157 OG 94 (December 28, 1993)(See 37 CFR § 1.6(d)). The Central PTO Fax Center Number is (571) 273-8300.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Russell Negin, Ph.D., whose telephone number is (571) 272-1083. The examiner can normally be reached on Monday-Friday from 7am to 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's Supervisor, Ardin Marschel, Ph.D., Supervisory Patent Examiner, can be reached at (571) 272-0718.

Any inquiry of a general nature or relating to the status of this application should be directed to Legal Instrument Examiner, Tina Plunkett, whose telephone number is (571) 272-0549.

Information regarding the status of the application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information on the PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

-RSN 3/15/06

*RM 3/15/06*

*John S. Brusca 15 March 2006*  
**JOHN S. BRUSCA, PH.D**  
**PRIMARY EXAMINER**